

# ELLIS:LAWHORNE

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November 22, 2006

**FILED ELECTRONICALLY AND ORIGINAL VIA 1<sup>ST</sup> CLASS MAIL SERVICE**

The Honorable Charles L.A. Terreni  
Chief Clerk  
**South Carolina Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of New  
Schedule of Rates and Charges for Water and Sewer Services  
**Docket No. 2005-13-WS, ELS File No. 1015-10306**

Dear Mr. Terreni:

Enclosed for filing please find the original and one copy (1) copy of the **Motion Seeking Approval to Present the Pre-Filed Testimony of Joe Maready at the Hearing in this Docket** for filing on behalf of Wyboo Plantation Utilities, Inc. in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please stamp "received" the additional copy of this letter, and return in the enclosed envelope.

With kind regards, I am

Yours truly,



John F. Beach

JB/cr

Attachments

cc: all parties of record, w/a  
Mr. Mark Wrigley, w/a

**THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.**

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2005-13-W/S**

IN RE:

Application of Wyboo Plantation  
Utilities, Inc. for adjustment of rates and  
charges for the provision of water and  
sewer service

)  
)  
) **MOTION SEEKING APPROVAL TO**  
) **PRESENT THE PRE-FILED TESTIMONY**  
) **OF JOE MAREADY AT THE HEARING IN**  
) **THIS DOCKET**  
)  
)

Comes Now Wyboo Plantation Utilities, Inc. ("Wyboo"), by its undersigned counsel, and hereby moves, pursuant to Commission Rules 103-803, 103-840, 103-869 and 103-870, for a ruling from the South Carolina Public Service Commission (the "Commission") allowing Wyboo to present the prefiled direct testimony of Joe Maready (the "Testimony") at the hearing in this matter and make the same part of the Record in this Docket. Because of the exigency created by the unexpected events described herein, the paramount importance of the Testimony to Wyboo in the instant Docket, and because of the effect the Commission's ruling will have on Wyboo's ability to present its rate case to the Commission, Wyboo requests that the Commission hear and rule on this Motion as soon as possible and in any event at least one full week prior to the Hearing. Furthermore, because of the time-sensitive nature of these circumstances and because the waiver of the particular Commission Rule sought herein can only be granted by the Commission, Wyboo respectfully requests that this Motion be heard directly by the Commission.

## **BACKGROUND**

On August 17, 2006, Wyboo filed an application with the Commission seeking approval of an amended schedule of rates for water and wastewater services. On October 25, 2006, Wyboo prefiled the direct testimony of Joe Maready. Mr. Maready, who is familiar to the Commission because of his past employment as a Commission rate accountant, and his participation in numerous Commission proceedings, was retained by Wyboo to provide testimony in support of the Company's proposed rates. Mr. Maready worked with Wyboo for many months before Wyboo even filed its rate application to help determine and structure the rates Wyboo currently requests.

On November 17, 2006, Mr. Maready died unexpectedly of a heart attack. The hearing in this Docket is scheduled for December 13, 2006. Pursuant to the provisions of S.C. Code Ann. Sections 58-5-240 (C) and (D), the Commission must issue an order approving or disapproving the changes sought by the Company no later than February 22, 2007.

## **ARGUMENTS**

Wyboo requests that the Commission allow the Testimony into the Record of this proceeding, notwithstanding the fact that Mr. Maready cannot appear to present the Testimony. Accordingly, Wyboo requests a waiver of Commission Rule 103-869(A), which requires that "[w]itnesses presenting testimony shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them." Rule 103-803 provides that "[i]n any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest."

### **Compliance with Rule 103-869 Presents Wyboo with Hardship and Difficulty**

The instant situation has presented Wyboo with insurmountable "hardship or difficulty" in the event that a waiver is not granted. In fact, Wyboo's compliance with Rule 103-869 would not only be difficult: it would be impossible. Mr. Maready cannot swear or affirm his prefiled direct testimony. Nor would it be possible, practical, or feasible for Wyboo to procure the services of another accounting witness at this point. First, the Commission's statutory deadline to issue an order in this case is February 22, 2007. As such, Wyboo could not seek a continuance in this case for the purpose of obtaining another appropriate accounting witness and familiarizing that person with the Testimony.

Second, even if the statutory scheme applicable to this Docket provided the flexibility to allow Wyboo to "replace" Mr. Maready, the time and expense associated with same would be extraordinarily large. Mr. Maready expended a great deal of time and effort over the past twelve months not only in creating his testimony, but also in organizing every facet of the accounting portion of Wyboo's rate application. Wyboo has already paid Mr. Maready for his work, pursuant to contract.

Evidence of the difficulty and extent of Mr. Maready's work is shown by the fact that, in order for the Office of Regulatory Staff ("ORS") to perform the same accounting function for its own audit, they served almost one hundred data requests upon Wyboo, and Wyboo provided more than 5,000 pages of documents for use by the ORS in its audit in this Docket. Accordingly, the Testimony is a compendium of Mr. Maready's knowledge gained over the course of many months, which included review of all relevant company documents, numerous meetings with Wyboo personnel and time spent reviewing the Company's books and records, and the creation of work papers. In view of the complex and document-intensive nature of this case, putting another

witness in the position to adopt Mr. Maready's testimony would be extremely time-consuming and costly. The exercise would, in addition to the substantial expense involved, be inefficient and wasteful of not only of the Company's time and resources, but also those of the Office of Regulatory Staff ("ORS"), other parties in this Docket, and the Commission, all of whom have an interest in the timely conclusion of this Docket. Nor would recreating accounting testimony serve the interests of Wyboo's customers, as Wyboo would be entitled to recover the duplicative expenses associated with retaining another witness as part of this case.

#### **Allowing the Testimony into the Record Serves the Public Interest**

Granting the waiver sought herein and allowing the Testimony, an integral, crucial, and indispensable part of Wyboo's case, clearly serves the public interest. Without accounting testimony, Wyboo cannot provide, and the Commission cannot review, the accounting rationale supporting Wyboo's application for rate relief. Put simply, if the Testimony does not become part of the record, Wyboo will be severely prejudiced in attempting to demonstrate its entitlement to the rate relief it so desperately needs. Therefore, the public interest considerations for Wyboo cannot be overstated.

As set out above, the public interest considerations relative to ORS also support allowing the Testimony in the record, so that ORS can advocate its view in this Docket without unnecessary and duplicative time and expense.

The public interest relative to Wyboo customers is also served by granting this Motion, as doing so will serve to limit those expenses for which those customers may ultimately be responsible through increased rates.

As described herein, the prejudice that Wyboo would face in the event the Testimony does not become part of the Record far outweighs the prejudice that might inure to any other party in this Docket. To the extent that procedural concerns are raised by parties to this Docket that may arguably touch on the public interest (or the issue of prejudice), Wyboo makes several proposals below that address all those possible concerns and further ensure that a full and fair hearing takes place.

**The Commission Should Take Several Steps  
to Take into Account the Unique Posture of this Case**


Wyboo suggests that the Commission consider allowing the following to take place in order to address Mr. Maready's absence from the hearing. One procedural mechanism has already been established. All parties have had the opportunity to address the points raised the Testimony. As previously noted, three of the witnesses sponsored by the ORS have filed testimony responding to points raised in the Testimony. Second, in view of the extraordinary circumstances extant in this Docket, and in order to ensure that no party in this Docket is hampered by Mr. Maready's untimely passing, Wyboo will not object should any party file testimony in response to the Testimony at any time prior to the hearing. The Parties have a scheduled opportunity to do this in filing their surrebuttal testimony on December 1. Similarly, Wyboo would not object to the Commission allowing the parties to make oral arguments at the Hearing specific to the substance of Mr. Maready's testimony, and allowing the parties to file post-hearing briefs on the Testimony as well as other aspects of the case. These measures will allow the parties the opportunity to present evidence and make arguments in the absence of the ability to cross-examine Mr. Maready on the Testimony.

### CONCLUSION

Events that no party could control have put Wyboo in the position where it has no choice but to seek the relief sought by this Motion. Wyboo recognizes the procedural irregularity caused by Mr. Maready's death, but believes that fundamental fairness and the public interest support granting the Motion as set out herein.

WHEREFORE,, for the foregoing reasons, Wyboo respectfully requests that the Commission allow the prefiled Direct Testimony of Joe Maready to be admitted into evidence and grant Wyboo such other and further relief as the Commission determines to be just and proper.

RESPECTFULLY SUBMITTED this 22nd day of November, 2006.



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Utilities, Inc.

Columbia, South Carolina  
November 22, 2006

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-13-W/S**

IN RE:

Application of Wyboo Plantation  
Utilities, Inc. for adjustment of rates and  
charges for the provision of water and  
sewer service

**CERTIFICATE OF SERVICE**


This is to certify that I have caused to be served this day, one (1) copy of the **Motion Seeking Approval to Present the Pre-Filed Testimony of Joe Maready at the Hearing in this Docket** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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November 22, 2006  
Columbia, South Carolina